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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DIANE DANIELS,

Plaintiff and Appellant,

v.

SAN DIEGO YOUTH SERVICES,

Defendant and Respondent.

D069401

(Super. Ct. No. 37-2013-00081681-
CU-WT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joel R. Wohlfeil, Judge. Affirmed.

Diane Daniels, in pro. per., for Plaintiff and Appellant.

Allen Matkins Leck Gamble Mallory & Natsis and Amy Wintersheimer Findley
for Defendant and Respondent.

Diane Daniels appeals from a defense judgment in favor of her former employer, San Diego Youth Services (SDYS), in her wrongful termination action. Daniels was self-represented at trial and remains so on appeal. Because of significant deficiencies in her

appellate brief and her failure to designate a reporter's transcript or provide an adequate substitute for a reporter's transcript, as well as the limited documents she designated for inclusion in the clerk's transcript, we are unable to address the merits of her arguments. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. Introduction

Violating California Rules of Court,¹ rule 8.204(a)(2)(C), Daniels's two-page opening brief contains no summary of the significant facts. Because she elected to proceed without a reporter's transcript, the record on appeal consists solely of the documents she designated for inclusion in a clerk's transcript.

Her brief contains only two citations to the appellate record. The first is to page 59 of the clerk's transcript, which is part of her designation of record on appeal. As such, it sheds no light on the nature of her claims or the evidence at trial or the court's rulings.

The second citation is to pages 35-36 of the clerk's transcript, which is the caption and first page of one of Daniels's posttrial filings. There, Daniels accuses the trial judge of conspiring with SDYS's attorney to commit "fraud", she purports to "order" SDYS to pay her \$4,950,000 even though the court rejected all her claims, and she threatens the trial judge with "contempt." (Capitalization omitted.)

¹ All further references to rules are to the California Rules of Court.

Given the sparse record, this factual and procedural background is drawn from what we can discern from the few documents Daniels included in the clerk's transcript, including the court's statement of intended decision and judgment.

B. Daniels's Lawsuit Against SDYS

Daniels was employed by SDYS as a mental health clinician. In July 2012, SDYS terminated Daniels's employment because she failed to provide medical documentation for an extended leave of absence that began the day she was scheduled to receive a performance review. During her leave, SDYS uncovered additional job deficiencies.

Daniels sued SDYS, asserting SDYS terminated her employment in a discriminatory manner and in violation of the California Family Rights Act (CFRA) (Gov. Code, § 12945.2). She also asserted SDYS failed to pay overtime and failed to provide required meal periods and rest breaks.

SDYS denied Daniels's allegations, asserting it terminated Daniels's employment for legitimate, nondiscriminatory reasons. SDYS also asserted Daniels was an exempt employee, and therefore SDYS did not unlawfully fail to provide meal periods and rest breaks.

C. The Court's Judgment

After a three-day bench trial where six witnesses testified, the court determined SDYS terminated Daniels's employment "for legitimate, non-discriminatory business reasons, which did not violate the CFRA." The court also found Daniels "failed to produce evidence that she suffered from a disability, failed to establish that she was able to perform the essential functions of her job, and . . . failed to establish that SDYS

harbored any discriminatory intent towards her of any kind." The court found that during Daniels's extended absence from the workplace, SDYS discovered "additional job deficiencies . . . making clear that Daniels could no longer be employed in her position as Mental Health Clinician" The court found there was "[n]o credible evidence of[] any pretext in the decision of SDYS to terminate Daniels."

The court also determined SDYS did not unlawfully fail to pay overtime and did not unlawfully fail to provide Daniels with meal periods and rest breaks.

The court found that SDYS was not engaged in unfair trade practices within the meaning of Business and Professions Code section 17200.

On Daniels's claim that SDYS violated the Labor Code Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.), the court found Daniels had failed to satisfy the statutory prerequisites to suit and, in any event, her PAGA claims were time-barred.

Last, the court found SDYS did not violate Labor Code sections 201 (requiring immediate payment of wages on discharge), 1050 (misrepresentation preventing plaintiff from obtaining employment), and 1102.5 (prohibiting employer from retaliating against an employee for disclosing information to certain persons or entities).

D. Posttrial Filings by Daniels

After trial, Daniels filed a pleading entitled, "Ex Parte Notice of Intention to Move for a New Trial, Reconsideration." She also filed a separate document entitled, "Memorandum of Points and Authorities in Support of Motion for New Trial." On December 1, 2015, the court denied Daniels's ex parte application, directing her "to go by

way of noticed motion." The record Daniels has provided does not contain any noticed motion for new trial or any ruling on same.

About a week later, Daniels filed a notice of appeal from the judgment; however, the court did not enter judgment until January 6, 2016.

On December 28, 2015, Daniels filed a document entitled, "Motion to Enforce Order." There, she purported to "appoint" the trial judge, as "trustee" to "execute this order." (Capitalization omitted.) The "order" contains a rambling diatribe against the trial judge, accusing him of unspecified "misconduct during court proceedings" which "usurped and denial [*sic*] of the rightful authority" of Daniels. (Capitalization omitted.) Daniels purported to "sanction" the judge \$1,500 and sought to compel him to order SDYS to pay her \$4,950,000.

On January 6, 2016, Daniels filed a document entitled, "Motion[] (Third) to Enforce Order, Quash Public Servant's Unlawful Decision, Award Granted to Daniels Executor and Beneficiary." (Some Capitalization omitted.) There, she again purported to "sanction" the judge, this time for \$2,000, and again purported to order SDYS to pay her \$4,950,000 by writing, "IT IS SO ORDERED" above her own signature, as "Diane-Daniels, Executor and Beneficiary." Again, Daniels's "order" states that if the trial judge should disobey these commands, "he will be found in contempt" and reported "to the Commission on Judicial Performance for various documented violations of the law, statutes, and misconduct." (Capitalization omitted.)

Later that same day, January 6, 2016, the court entered judgment "against Plaintiff Diane Daniels with respect to all causes of action pled against Defendant [SDYS] in [Daniels]'s Amended Complaint."

E. Daniels's Designation of Record on Appeal

On January 8, 2016, Daniels filed a designation of record on appeal, requesting a clerk's transcript and a reporter's transcript.² However, on January 25, 2016, Daniels filed an amended designation of record, in which she elected to proceed without a reporter's transcript. The Judicial Council form Daniels used in amending her designation, where she checked the box stating: "I elect to proceed: a. . . . WITHOUT a record of the oral proceedings in the superior court," contains the following admonition:

"I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

On June 30, 2016, Daniels filed a motion to augment the record on appeal with 26 additional documents from the superior court file. However, violating rule 8.155(a)(2), Daniels failed to attach to her motion a copy of any of the documents she wanted added to the record. On July 20, 2016, we denied Daniels's motion to augment *without* prejudice to refile the motion with copies of all documents she wanted added to the record. Daniels never refiled the motion to augment. Accordingly, the record on appeal

² The clerk's transcript contains a form entitled "Appointment of Official Reporter Pro Tempore," indicating the trial proceedings were reported.

consists solely of 63 pages of documents she designated to be included in the clerk's transcript.³

DISCUSSION

A. *The Standard of Review*

A judgment is presumed correct, all presumptions are indulged to support it on matters as to which the record is silent, and an appellant must affirmatively demonstrate error in the proceedings below. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant must support the claim of error by providing an adequate record that supports the appellant's assertions of error. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) "It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Daniels has elected to proceed with her appeal solely on a clerk's transcript, which we treat as an appeal on the "judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d

³ The clerk's transcript contains the following documents: clerk's minutes of the last trial day, appointment of reporter pro tempore, minute order and attached statement of intended decision, Daniels's ex parte notice of intention to move for new trial, reconsideration, Daniels's memorandum of points and authorities in support of motion for new trial, order denying ex parte application and directing plaintiff to file a noticed motion, notice of appeal, Daniels's motion (third) to enforce order, quash public servant's unlawful decision, award granted to Daniels executor and beneficiary, judgment, notice designating record on appeal, Daniels's motion (third) to enforce order, etc., order on fee waiver, notice of entry of judgment, amended notice designating record on appeal, and notice re: fee for record on appeal.

1079, 1082, 1083.) When an appeal is on the judgment roll, we conclusively presume sufficient evidence was presented to support the trial court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error appears on the face of the record. (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521.) These rules apply even where a person is self-represented on appeal. (See *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

B. Daniels's Contentions

Daniels's brief lacks a coherent factual statement, legal argument, citations to the record, and pertinent legal authority. (Rule 8.204(a)(1)(B)-(C).) Statements of fact not part of, nor supported by citations to, the record are improper and cannot be considered on appeal. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625, superseded on other grounds by Code Civ. Proc., § 473, subd. (b).) Accordingly, we disregard any statements of alleged fact stated in Daniels's brief that are not supported by a record citation. (*Pulver*, at p. 632; *Kendall*, at p. 625; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.)

The stream-of-consciousness nature of Daniels's brief, coupled with the absence of any argument headings, makes it very difficult to discern what precise errors she is claiming, and how any such errors were prejudicial. Daniels's self-represented status may explain the deficiencies in her brief, but does not excuse them. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [" "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney" "].) To the extent we

are unable to discern any of her arguments because of her failure to provide a cogent statement of facts or cite to legal authority, that argument is deemed waived. (*Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 109.)

As best we can discern from Daniels's brief, her first argument is SDYS "never responded to the summons and complaint," and therefore the court should have entered a default in Daniels's favor. (Capitalization omitted.) There are at least two fatal problems with this argument. First, it has no support in the record. The clerk's transcript does not contain the summons and complaint, answer, request for entry of default, or any other document relevant to such a legal contention. Based on this inadequate record, we cannot address the merits of this claim; therefore, Daniels has not carried her burden on appeal. (*In re Kathy P.* (1979) 25 Cal.3d 91, 102 ["appellant . . . has not met her burden of showing error by an adequate record"]; *Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412 ["[w]e cannot presume error from an incomplete record"]; *Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955 [because "the record does not contain all the documents . . . we decline to find error on a silent record"].)

Second, Daniels has not supported her argument by citation to any legal authority whatsoever. "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99; see also *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 (*Landry*) ["[w]hen an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"]; *Ochoa v. Pacific Gas & Electric Co.*

(1998) 61 Cal.App.4th 1480, 1488, fn. 3 [contention was deemed waived because "[a]ppellant did not formulate a coherent legal argument nor did she cite any supporting authority"].)

Accordingly, we conclude Daniels has forfeited the issue of whether the court should have entered a default against SDYS because she failed to present any coherent, substantive arguments or analyses supported by citations to the record and legal authorities. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 ["[A]n appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If [s]he fails to do so, the argument is forfeited."].)

Next, Daniels argues the trial judge "is in Fault in Dishonor upon the instruments non-performance, acceptance of liability, and acquiescence" She contends the trial judge "remains in Commercial Dishonor with Recourse." This argument is incoherent and we do not consider it. Although we recognize that Daniels is self-represented, even as a self-represented appellant Daniels is obligated to make coherent legal arguments. (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524.)

Third, Daniels contends the trial judge erroneously failed to recuse himself. This argument is also forfeited. The record does not contain any motion or request that the trial judge recuse himself, nor any ruling on such a motion or request. Moreover, Daniels cites no legal authority to support her assertion of error. "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community*

Hospital (1999) 72 Cal.App.4th 849, 856; see also *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 [reviewing court may disregard contentions unsupported by citation to the record]; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [if no citation is furnished on a particular point, the court may treat it as waived].)

Additionally, there is nothing in the record showing that, if Daniels objected to Judge Wohlfeil presiding over trial, she sought any writ review of his decision to do so. "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (Code Civ. Proc., § 170.3, subd. (d).)

Fourth, Daniels contends SDYS's attorney "violated Daniels [*sic*] private rights" and "refused to provide method of operation." This argument is incomprehensible, unsupported by anything in the record, and lacks legal authority. Therefore, it is forfeited. (*Landry, supra*, 39 Cal.App.4th at pp. 699-700.)

Daniels also contends the court "ignored Daniels [*sic*] numerous objections, proceeded without Daniels [*sic*] consent, and refused to declare Declaratory Judgment as demanded." (Capitalization omitted.) We reject these assertions because none is supported by the record. Because Daniels failed to designate a reporter's transcript, the record contains no objections she may have made, nor does it reflect whether or in what manner the court may have "proceeded without [her] consent." Moreover, Daniels did not include her operative complaint in the clerk's transcript, and therefore we cannot even

begin to analyze or address her contention that the court erroneously "refused to declare Declaratory Judgment as demanded."

Because Daniels has provided us with only a partial clerk's transcript, our review is limited to errors that are affirmatively shown by the record. Without a reporter's transcript, we cannot entertain Daniels's contentions that she was not given an adequate chance to make her case or that the trial judge exhibited bias against her.

Daniels also asserts the court improperly "refused" her demand for a jury trial. However, the record does not contain any request for a jury trial, nor any order denying same. Therefore, Daniels has forfeited this contention. Absent a reporter's transcript or other record to support Daniels's claim of error, we must presume official duties have been regularly performed (Evid. Code, § 664), and this presumption applies to the actions of trial judges. (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1461-1462, fn. 5; *Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 ["If the invalidity does not appear on the face of the record, it will be presumed that what ought to have been done was not only done but rightly done."].) "The burden of affirmatively demonstrating error is on the appellant." (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) An appellant must provide an argument and legal authority to support her contentions. This burden requires more than a mere assertion that the judgment is wrong.

Daniels's remaining appellate contentions are difficult to decipher. For example, she characterizes her brief as a "Notice of Fault in Dishonor" and contends the court deprived her of her rights "Under the UCC, which governs all contracts" She contends there were "no contracts, grants nor gifts, no agreements between [Judge]

Wohlfeil and Diane Daniels, in rem, nor Diane Daniels, personam." (Capitalization omitted.)

These arguments are so vague and conclusory that Daniels has not carried her burden on appeal to present persuasive substantive argument and analysis showing the trial court prejudicially erred. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105 [conclusory claims did not persuade appellate court].)

We emphasize that an appellant's obligation to present legal analysis and relevant supporting authority for each point asserted are not merely technical requirements. These are important rules of appellate procedure designed to alleviate the burden on the court by requiring litigants to present their case systematically. (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.)

In the remainder of her brief, Daniels makes broad claims of error. For example, she contends her rights to meal periods and rest breaks were violated, and she also contends SDYS misclassified her as an exempt employee. However, because this appeal is on the judgment roll, these claims necessarily fail. " "[W]here no error appears on the face of the judgment roll record, all intendments and presumptions must be in support of the judgment . . . and any condition of facts consistent with the validity of the judgment will be presumed to have existed rather than one which would defeat it" (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 575.)

Daniels also contends the trial was not "fair and impartial" and the court "violated Daniels [*sic*] private rights." These conclusory contentions, and others like them throughout Daniels's brief, are forfeited because Daniels presents no meaningful legal

analysis supported by citations to authority and facts in the record to support the claimed error. " 'Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion.' " (*People v. Allen* (1993) 20 Cal.App.4th 846, 858.) By failing to provide an adequate record, Daniels cannot meet her burden to show error. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187 [argument on appeal forfeited where appellant included only selected excerpts from clerk's transcript and failed to include reporter's transcript or exhibits, preventing meaningful review].)

DISPOSITION

The judgment is affirmed. San Diego Youth Services is entitled to costs.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.